



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

Mr. David Yaussy, Esq.
Robinson & McElwee
P.O. Box 1791
Charleston, WV 25326

Re: PII d/b/a Eight is Enough Farm, Administrative Order, CWA-03-2012-0023DN

Dear Mr. Yaussy,

I write to inform you that the United States Environmental Protection Agency (EPA) hereby withdraws the administrative compliance order (ACO) issued to Ms. PII on November 14, 2011. In light of actions Ms. PII has taken since the issuance of the administrative compliance order to remedy and prevent environmental harm caused by her operation, EPA believes that continued pursuit of this action is no longer warranted and hereby withdraws the November 14, 2011 order. Barring a significant change in circumstances or operations at Ms. PII facility, EPA will not issue a similar order to Ms. PII in the future.

On June 17, 2011, EPA representatives conducted an inspection of the poultry grow-out facility belonging to Ms. PII called Eight is Enough. During the inspection, EPA representatives observed manure and other pollutants on the ground outside of the poultry houses exposed in a manner that it would come into contact with precipitation during rain events and generate process wastewater. They observed that the wastewater would then be carried approximately 200 yards across neighboring land to Mudlick Run, which is a water of the United States (U.S.). On November 14, 2011, EPA issued an order to Ms. PII reciting that Ms. PII owns and operates a CAFO that discharges pollutants into waters of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit in violation of the Clean Water Act. The order directed Ms. PII to submit an application to the West Virginia Department of Environmental Protection for NPDES permit coverage.

On February 13, 2012, you sent a letter to EPA on behalf of Ms. PII stating that she did not intend to apply for a permit at this time. You stated that her decision was based upon several factors, including:

1. There is no discharge of process wastewater from the poultry-broiler production areas at Eight is Enough. All operations, as well as chicken litter and raw material storage, are under roof and are not exposed to stormwater. Care is taken to clean up material that might spill out during litter transfer operations, or any other activity that might result in material being left on the ground outside of these areas....



2. There is no discharge from the farm to waters of the United States. Ms. [PII] is unaware of any surface flow of storm water from the farm to Mudlick Run. The water that runs from the farm pools in a nearby pasture and percolates into the ground....

You also described other efforts that the facility undertakes to minimize exposure of litter or other material to storm water. You explained it provides an extensive storage area for chicken litter and composting operations under roof, keeping the loading area swept and in order during and after litter transfer. Litter loading takes place on a pad either in dry weather or under roof. Finally, you stated that Ms. [PII] has implemented a nutrient management plan developed in conjunction with the West Virginia Department of Agriculture.

On May 23, 2012, EPA conducted an announced follow-up inspection of Ms. [PII] poultry operation in order to verify compliance with the November 14, 2011 order. The second inspection report is attached. During the inspection, the [PII] showed EPA the new management practices they had implemented since the issuance of the order, including their method of conducting poultry house clean-outs using a conveyor and hopper, which the [PII] told EPA that they intend to continue to use. EPA also conducted water and soil sampling, the results of which are included in the attached report.

After considering all of the information described above, EPA is withdrawing the November 14, 2011 administrative compliance order issued to Ms. [PII]. Please contact Mr. Andrew Duchovnay at (215) 814-2484 with any questions you may have.

Sincerely,



Jon M. Capacasa, Director
Water Protection Division